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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 4th January 2007

No. 123—li/1(S)-4/2000 (Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th November 2006 in Industrial Dispute Case No. 48 of 2000 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of the Executive Engineer, Rural Water Supply and Sanitation Division, Balangir and its workman Shri Premalal Seth, son of Shri Madhusudan Seth, At Bijilimonda, P. S. Sikachhida, Dist. Balangir was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR
INDUSTRIAL DISPUTE CASE No. 48 OF 2000
Dated the 29th November 2006

Present :

Shri P. K. Mahapatro, LL. B.
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of
the Executive Engineer,
Rural Water Supply and Sanitation
Division, Balangir.

.. First Party—Management

And

Its workman,
 Shri Premalal Seth,
 S/o Madhusudan Seth,
 At Bijilimonda, P. S. Sikachhida,
 Dist. Balanagir.

.. Second Party—Workman

Appearances :

For the First Party—Management

.. Additional Government
 Pleader, Sambalpur.

For the Second Party—Workman

.. Shri P. K. Pradhan and
 Shri K. L. Sharma, Advocates,
 Sambalpur.

AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Sections 10 and 12 of the Industrial Disputes Act, 1947 vide Memo. No. 14507(5), dated the 28th November 2000 for adjudication of disputes Schedule below :

“Whether the refusal of employment of Shri Premalal Seth by the Executive Engineer, Rural Water Supply and Sanitation Division, Balangir with effect from the 20th June 1994 is legal and/or justified ? If not, to what relief he is entitled ?”

2. The workman Shri Premalal Seth has moved this Court to reinstate him in service and to accord relief as deem fit and proper by this Court with the facts that he was serving under the management as a Tractor Helper from 1984 to 1985 on daily wage basis and then his daily wages was replaced by payment of monthly wages and after 1988 up till 1994, he was engaged as ‘Mechanic’ for repair of Tube Well, but all of a sudden in the year 1994 without observing the requirements of the Act, he was removed, as a result, the said retrenchment be held as illegal and the benefits as prayed for may be extended in his favour. To sum up, it is the case of the workman that he was in service under the management from 1984 to 1985 and as at the time of retrenchment, the legal formalities were not observed by the management. So he be reinstated in service with benefits as deem fit and proper by this Court.

3. The management side has not filed any written statement challenging the above stand of the workman. As a matter of fact, in spite of getting sufficient time, the written statement was not filed and then the Industrial Dispute Case was adjourned for settlement of issues. As it appears on the date fixed i.e. on the 11th April 2002 a last chance was given to the management for appearance and to participate in the proceeding and then vide order, dated the 19th June 2002 the management side was set *ex parte*. Thereafter a restoration petition was filed and after hearing it was allowed. But the memory of the management had failed

them to file written statement even after the restoration of the case and then the matter was adjourned for hearing. To sum up, the management side has not filed written statement in this case.

4. As per law, a Defendant even without filing written statement is entitled to take part in the proceeding. The law decided by the Hon'ble Apex Court in AIR 1989 S. C. P. 162 squarely applies to the present case. But the dictum laid down in the above referred case is that by non-filing of written statement, the defendant cannot be allowed to lead evidence from his side. In the present case, inadvertently the management side is allowed to adduce evidence and during the course of the same, the plea taken by the management that he was not serving under it from 1984 to 1994 is put forth. In his examination-in-chief, the Senior Clerk of R. W. S. S., Balangir Division has stated that after 1985 the workman did not turn up and he left his job out of his own wish. In my opinion as per the stipulations given by the Hon'ble Apex Court in the above referred case, the management witness cannot put forth such a plea as there is no pleading to that effect. He can only be allowed to point out the falacy or weakness of the workman's case and nothing else. Keeping the above background in view I will now deal with the merit of this case.

5. The workman is figured as the only witness from his side. He has stated that he was working under the management from 1984 till 1994 and to suffice it he has filed the certificate issued by the Junior Engineer (Ext. A) and the xerox copy of the letter issued by the Executive Engineer, R. W. S. S., Balangir Division to the Executive Engineer of P. H. Division, Balangir. By taking note of the oral evidence of the workman coupled with the documents filed by him. I am satisfied that he was in service under the management and he was removed from service by the management without any rhyme and reason. The plea taken by the M. W. 1 has no bearing to determine the merit of this case as because there is no pleading to that effect. Now, it is to be decided as to whether the workman is entitled to get the benefits as claimed by him.

6. As per law it is for the workman to show that he has been in continuous service under the management for not less than one year and that he was retrenched from service during the period of 12 months and during that period he had served not less than 240 days. The workman has given oral evidence in this regard. According to him, he worked continuously from 1984 till 1994. He has filed Exts. A and B to buttress his claim. Ext. A is a certificate issued by the Junior Engineer which shows that he was serving from the 23rd October 1987 to 30th June 1994 and he was having experience in repair of pipelines. Ext. B shows the engagement of the workman under the management. The above referred two documents coupled with the oral evidence of the workman are sufficient to say that the requirements of Section 25-F of the Industrial Disputes Act are meted by him. In absence of any pleading, it can be safely said that the management side has not complied the same. So as per law the retrenchment is to be held illegal and the workman is entitled to be reinstated in service with full back wages.

7. But the matter does not end here. It is the admitted position that after retrenchment up till now the workman has not worked under the management and for rendering no service, as per law he is entitled to get the benefits prayed for by him. If the full fledged back wages is allowed in support of the workman, then the possibility of causing prejudice to the management cannot be ruled out. So after weighing the entire situation I am of opinion to allow 50% back wages to the workman. Hence, the following award :—

AWARD

The reference is answered on contest against the management and in support of the workman. The refusal of employment of Shri Premalal Seth by the Executive Engineer, R. W. S. S., Balangir with effect from the 20th June 1994 is held to be illegal and unjustified. The management is directed to reinstate the workman in service with 50 % back wages within a period of two months hence.

Dictated and corrected by me.

P. K. MAHAPATRO
29-11-2006
Presiding Officer
Labour Court, Sambalpur

P. K. MAHAPATRO
29-11-2006
Presiding Officer
Labour Court, Sambalpur

By order of the Governor
N. C. RAY
Under-Secretary to Government